

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JERAMY PYE aka ZAZU MOHAMED,

Plaintiff,

vs.

PACHECO #1640, etc., *et al.*,

Defendant,

2:08-cv-820-JCM-RJJ

REPORT & RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE

This matter was referred to the undersigned Magistrate Judge on the failure of the Plaintiff, Jeramy Pye to comply with an order from the Court.

The Court having reviewed this matter makes the following findings:

1. Plaintiff filed this case on June 24, 2008. Complaint (#1).
2. At the time of filing the complaint, Plaintiff was incarcerated at the Federal Correctional Institution in Victorville, California.
3. Based on his incarcerated status, Plaintiff's Application for Leave to Proceed *In Forma Pauperis* (#1) was granted on July 18, 2008 and Plaintiff was ordered to pay a partial filing fee Order (#3).
4. The partial filing fee was not paid by the Plaintiff.
5. On July 28, 2008, the Order (#3) was returned by the United States Postal Service marked "Not Deliverable". Returned Mail (#5).
6. Upon the filing of a Notice of Change of Address (#4) by Plaintiff, the Court determined he was no longer incarcerated and ordered him to supplement his

Application (#1) based upon his change in status. Order (#6).

7. Plaintiff filed a Supplemental Affidavit (#7) whereupon the Court set a hearing scheduling a status conference for March 16, 2009. Order (#8).

8. The Order (#8) was served on the Plaintiff by certified mail, return receipt requested. Certified Mail Receipt (#9)

9. The Order (#8) was returned by the United States Postal Service marked "Return to Sender Unclaimed Unable to Forward". Returned Mail (#10).

10. An Order to Show Cause (#11) was entered by the Court scheduling a hearing for April 10, 2009.

11. Said order was served on the Plaintiff by certified mail, return receipt requested Certified Mail Receipt (#12) and was signed for by the Plaintiff on April 9, 2009. Domestic Return Receipt (#13).

12. Plaintiff, Jeramy Pye did not appear at Show Cause hearing on April 10, 2009, and failed to contact the court regarding his non-appearance.

13. On April 30, 2009, the Court issued a second Order to Show Cause (#14) scheduling a hearing for May 26, 2009.

14. Plaintiff did not appear in Court for the hearing however, the Court was able to reach the Plaintiff by telephone and proceeded with the hearing by conference call.

15. At the hearing, the Court denied the Application for Leave to Proceed *In Forma Pauperis* (#1) and ordered Plaintiff to pay the full filing fee and file an amended complaint by June 26, 2009.

16. As of the date of this Order, Plaintiff has not paid the filing fee and has not filed an amended complaint.

17. Plaintiff has not sought an extension of time to comply with the Court's Order and further, has not contacted the Court regarding his non-compliance.

RECOMMENDATION


Based on the foregoing and good cause appearing therefore,

1 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that this case
2 be **DISMISSED WITH PREJUDICE**.

3 **NOTICE**

4 Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and
5 Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days
6 after service of this Notice. The Supreme Court has held that the courts of appeal may determine
7 that an appeal has been waived due to the failure to file objections within the specified time.
8 Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has also
9 held that (1) failure to file objections within the specified time and (2) failure to properly address
10 and brief the objectionable issues waives the right to appeal the District Court's order and/or
11 appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th
12 Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

13 DATED this 21th day of August, 2009.

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17 ROBERT J. JOHNSTON
18 United States Magistrate Judge
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